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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,367	03/19/2004	Alan B. Auerbach	13768.494	9225
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WORKMAN NYDEGGER/MICROSOFT			EXAMINER	
1000 EAGLE GATE TOWER			FATEHI, PARHAM R	
60 EAST SOUTH TEMPLE				
SALT LAKE CITY, UT 84111			ART UNIT	PAPER NUMBER
			2194	
			MAIL DATE	DELIVERY MODE
			09/20/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/804,367

Applicant(s)

AUERBACH ET AL.

Examiner

Parham (Paul) R. Fatehi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 20040319.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

WILLIAM THOMSON
SUPERVISORY PATENT EXAMINER

DETAILED ACTION

1. Claims 1-25 are pending in this application.

Information Disclosure Statement

2. The information disclosure statement (IDS) submitted on 3/19/2004 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 1-5, 14, 18, 21 and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Casati et al (US 2005/0160081) [hereafter Casati], in view of Wenocur et al (US 2002/0178360) [hereafter Wenocur].**
5. As per claim 1, Casati discloses an act of generating computer related metric data related to an application (Casati, Par. 15, generates computer related metric).

6. Casati does not explicitly disclose an act of accessing a manifest that indicates a portion of the generated; computer related metric data is to be packaged for delivery; an act of sending schema-based package start data to cause the portion of computer related metric data to be packaged; an act of sending a package send command to cause a packaged portion of generated computer related metric data to be delivered.
7. Whereas, Wenocur discloses accessing a manifest that indicates a portion of the generated; computer related metric data is to be packaged for delivery (Wenocur, Par. 73, In 1-7, accessing file giving overview); an act of sending schema-based package start data to cause the portion of computer related metric data to be packaged (Wenocur, Par. 1040, schema-based package); an act of sending a package send command to cause a packaged portion of generated computer related metric data to be delivered (Wenocur, Par. 1043, sending package).
8. One having ordinary skill in the art, at the time the invention was made, would have modified the method of Casati by the method of accessing a manifest for package delivery as taught by Wenocur, in order to enable the method to quickly determine what action should be taken with the metrics data and then to take indicated action in an efficient manner.

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9. As per claim 2, the teachings of Casati in view of Wenocur substantially discloses the invention as claimed and further discloses the act of generating computer related metric data comprises an act of an operating system generating computer related metric data related to the application (Wenocur, Par. 28, In 1-4, operating system).
10. As per claim 3, the teachings of Casati in view of Wenocur substantially discloses the invention as claimed and further discloses the act of generating computer related metric data comprises an act of the application generating computer related metric data related to the application (Casati, Par 1, In 1-4, related to application).
11. As per claim 4, the teaching of Casati in view of Wenocur substantially discloses the invention as claimed but does not explicitly disclose the application accessing a dynamic link library. One having ordinary skill in the art, at the time the invention was made, would have recognized that a DLL file is commonly used as a manifest since it can contain information about packaged files. Therefore, it would have been an obvious design choice to access a DLL file as an act of accessing a manifest.
12. As per claim 5, the teachings of Casati in view of Wenocur substantially discloses the invention as claimed and further disclose that an act of accessing a manifest

that indicates a portion of performance data is to be packaged for delivery (Wenocur, Par. 705, delivery).

13. As per claim 14, the teachings of Casati in view of Wenocur substantially discloses the invention as claimed and further discloses a computer system that includes a quality metric module, the quality metric module configured to package computer related metric data for delivery, a method for packaging specified computer related metric data (Casati, Par. 15, generates computer related metrics); an act of receiving schema-based package start data, the schema-based package start data indicating that a portion of generated computer related metric data is to be packaged for delivery (Wenocur, Par. 73, In 1-7, delivery); an act of accessing the portion of generated computer related metric data (Wenocur, Par 73, In 1-7, accessing); an act packaging the portion of generated computer related metric data according to a packaging schema (Wenocur, Par. 1040, packaging schema); an act of receiving a package send command (Wenocur, Par 1043, receiving package); and an act of sending the packaged portion of computer related metric data in response to the package send command (Wenocur, Par 1040, packaging).

14. As per claim 18, the teachings of Casati in view of Wenocur substantially disclose the invention as claimed and further disclose the act of accessing the

portion of generated computer related metric data from a data point store (Casati, Par. 10, data point store).

15. As per claim 21, it is rejected under the same reasons as claim 14 above.

16. As per claim 23, it is rejected under the same reasons as claim 14 above.

17. As per claim 24, it is an apparatus claim with the same limitations as claims 1 and 14 and is rejected under the same reasons as claims 1 and 14 above.

18. As per claim 25, it is an apparatus claim with the same limitations as claims 14 and is rejected under the same reasons as claims 14 above.

19. Claims 6-7, 13, 19 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Casati, in view of Wenocur and further in view of Eastep et al (US 6,732,625) [hereafter Eastep].

20. As per claim 6-7, the teachings of Casati as modified by Wenocur substantially disclose the invention as claimed but do not explicitly disclose accessing a manifest that indicates a portion of event log data is to be packaged for delivery; accessing a manifest that indicates statistical operations that are to be performed on generated computer related metric data.

21. Whereas, Eastep teaches accessing a manifest that indicates a portion of event log data is to be packaged for delivery; accessing a manifest that indicates statistical operations that are to be performed on generated computer related metric data (see Fig. 28 & col. 43, In 43-53, event log... statistical operations).

22. One having ordinary skill in the art, at the time the invention was made, would have modified the teachings of Casati in view of Wenocur to include accessing a manifest that includes event log data and statistical operations as taught by Eastep, in order to add features that would make the system more comprehensive for tracing and debugging and better informing the user with comprehensive metrics.

23. As per claim 13, the teachings of Casati in view of Wenocur and further in view of Eastep substantially discloses the invention as claimed and further discloses that the act of sending a package send command comprises an act of sending a dispose flag that indicates whether or not a corresponding package is to be retained after the package is queued for delivery (Eastep, see delivery flags and queue).

24. As per claim 19, the teachings of Casati in view of Wenocur and further in view of Eastep substantially disclose the invention as claimed and further disclose an act

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of performing a statistical operation based on the accessed portion of computer related metric data (Eastepp, col. 43, ln 43-53, statistical).

25. As per claim 22, it is rejected under the same reasons as claim 13 above.

26. Claims 8-10, 15 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Casati, in view of Wenocur and further in view of Mullins et al (US 2003/0208505) [hereafter Mullins].

27. As per claim 8, the teachings of Casati as modified by Wenocur substantially discloses the invention as claimed and but does not explicitly disclose an act of converting instructions included in the accessed manifest to schema-based package start data, the schema-based start data being defined in accordance with a selection schema.

28. Whereas, Mullins teaches an act of converting instructions included in the accessed manifest to schema-based package start data, the schema-based start data being defined in accordance with a selection schema (Par. 47, converting). One having ordinary skill in the art, at the time the invention was made, would have modified the teachings of Casati in view of Wenocur to include instruction conversion as taught by Mullins in order to transmit data across the system in a standardized format.

29. As per claim 9-10, the teachings of Casati in view of Wenocur substantially discloses the invention as claimed and further discloses the act of converting instructions included in the accessed manifest to schema-based package start data comprises an act of converting in instructions included in the accessed manifest into XML instructions; an act of sending XML instructions to a quality metric module to indicate to the quality metric module that a subset of the generated computer related metric data is to be packaged for delivery (Mullins, see Par. 47, XML conversions).
30. As per claim 15, the teachings of Casati in view of Wenocur substantially discloses the invention as claimed and further discloses the act of receiving schema-based package start data comprises an act of receiving XML instructions that indicated a portion of generated computer related metric data is to be packaged for delivery, the XML instructions defined in accordance with a selection schema (Mullins, see Par. 47, XML delivery and conversions).
31. As per claim 20, it is rejected under the same reasons as claims 8-10 and 15 above.

32. Claims 11-12 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Casati, in view of Wenocur and further in view of Staveley et al (US 6,973,491) [hereafter Staveley].

33. As per claim 11-12, the teachings of Casati in view of Wenocur substantially discloses the invention as claimed but does not explicitly disclose an act of sending a sample command, the sample command indicating that a quality metric module is to sample at least one item or event represented in the accessed manifest; sending a sample command comprises an act of sending a sample command that indicates that the computer related metric data represented in the accessed manifest is to be sampled.

34. Whereas, Staveley teaches sending a sample command, the sample command indicating that a quality metric module is to sample at least one item or event represented in the accessed manifest; sending a sample command comprises an act of sending a sample command that indicates that the computer related metric data represented in the accessed manifest is to be sampled (see Staveley, Detailed Description of Embodiments, Par. 91, sample configuration for testing).

35. One having ordinary skill in the art, at the time the invention was made, would have modified the teachings of Casati in view of Wenocur to include the act of

sending a sample command as taught by Staveley in order to effectively test the performance of the system.

36. As per claim 16-17, the teachings of Casati in view of Wenocur, and further in view of Staveley substantially disclose the invention as further disclose receiving a sample command (Staveley, Detailed Embodiments, Par. 91, sample); and an act of retrieving at least one item or event from system memory and storing the generated computer related metric data in a data point store (Casati, Par. 10, data store).

Conclusion


37. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Parham (Paul) R. Fatehi whose telephone number is 571-270-1407. The examiner can normally be reached on M-Th 9:30AM-8PM EST, off Fridays.

38. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Thomson can be reached on (571)272-3718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


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39. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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